**Testimony**

**Senate Bill 2307**

**Senate Industry, Business and Labor Committee**

**Tuesday, January 25, 2005; 8 a.m.**

**North Dakota Department of Health**

Good morning, Chairman Mutch and members of the Senate Industry, Business and Labor Committee. My name is Kathleen Mangskau, and I am director of the Division of Tobacco Prevention and Control for the North Dakota Department of Health. I am here today to provide information about various aspects of smoke-free workplaces.

Benefits of a Smoke-Free Workplace

The benefits of a smoke-free workplace are well documented. Workplace smoke-free policies protect employees' health, lower business costs, increase productivity and morale, and reduce absenteeism. Smoke-free policies also reduce the risk of lawsuits being filed by employees who become ill from working in the smoking section and breathing secondhand smoke. (National Restaurant Association, 1993)

In addition to reducing workplace exposure to secondhand smoke, smoke-free policies have resulted in significant reductions in the daily consumption of cigarettes by workers who smoke, as well as increases in tobacco cessation. (*The Guide to Community Preventive Services,* 2001) The Centers for Disease Control and Prevention puts a $3,383 price tag on each employee who smokes: $1,760 in lost productivity and $1,623 in excess medical expenditures. Businesses pay an average of $2,189 in workers' compensation costs for smokers, compared with $176 for nonsmokers. (Journal of Occupational and Environmental Medicine, 2001) Smokers, on average, miss 6.16 days of work per year due to sickness compared to nonsmokers who miss 3.86 days of work per year. (Tobacco Control, 2001)

Health Effects of Secondhand Smoke

The health hazards of secondhand smoke are well documented. According to the U.S. Centers for Disease Control and Prevention, secondhand smoke (also known as environmental tobacco smoke) is a leading cause of preventable death in this country, killing 35,000 nonsmokers each year. (CDC, 2004) In North Dakota, between 80 and 140 adults, children and babies die from secondhand smoke each year. (CDC, 1996)

Secondhand smoke is a mixture of the smoke given off by the burning end of a cigarette, pipe or cigar and the smoke exhaled from the lungs of smokers. Secondhand smoke is also called environmental tobacco smoke, and exposure to secondhand smoke is called involuntary or passive smoking.

The U.S. Environmental Protection Agency and the U.S. Department of Health and Human Services National Toxicology Program report that smoke from the burning end of a cigarette contains more than 4,000 chemicals and more than 60 carcinogens, including formaldehyde, cyanide, arsenic, carbon monoxide, methane and benzene. The EPA has classified secondhand smoke as a "Group A" carcinogen – a substance known to cause cancer in humans. The EPA reports that there is no safe level of exposure to environmental tobacco smoke. (EPA, 1992) In 2000, the National Institutes of Health formally listed secondhand smoke as a known human carcinogen in its *9th Report on Carcinogens*. The EPA estimates that secondhand smoke causes approximately 3,000 lung cancer deaths in nonsmokers each year. Besides the EPA and the NIH, many other United States environmental health, occupational health and public health authorities have condemned secondhand smoke as a health hazard, including the National Toxicology Program (2000), the National Cancer Institute (1993, 1995), the Occupational Safety and Health Administration (1994), the National Institute for Occupational Safety and Health (1990), the Surgeon General (1986) and the National Academy of Sciences (1986). A listing of the key reports documenting the health effects of secondhand smoke and a summary of findings from major studies are attached.

Numerous studies have documented the health effects associated with exposure to secondhand smoke, including lung cancer and nasal sinus cancer, heart disease deaths, and eye and nasal irritation in adults. Each year in North Dakota, 56 low birth weight babies are attributed to secondhand smoke, costing $378,247. (American Legacy Foundation, 2004) Restaurant and bar workers, who typically have greater exposure to secondhand smoke, are at 50 percent to 100 percent increased risk for lung cancer.

Recent studies assessing the association of secondhand smoke with heart disease show that exposure to secondhand smoke increases the risk of fatal and nonfatal coronary heart disease in nonsmokers by about 30 percent. Exposure to secondhand smoke for as little as 30 minutes can increase the formation of blood clots and restrict flow to the heart, causing a heart attack. A recent study in Helena, Montana, where a smoke-free law had been implemented, showed that heart attack admissions to the local hospital were reduced by 40 percent. The CDC states, "We now have a considerable amount of epidemiological literature and laboratory data on the mechanisms by which relatively small exposures to toxins in tobacco smoke seem to cause unexpectedly large increases in the risk of acute cardiovascular disease." (CDC, 2004)

<u>Current Support for Smoke-Free Environments</u>

There is growing support for smoke-free environments in North Dakota. A survey commissioned by the North Dakota Public Education Task Force on Tobacco in 2004 found that the majority of North Dakotans age 18 through 54 feel smoking should not be allowed in schools, public facilities, entertainment arenas, private businesses and restaurants. More than 86 percent of those surveyed feel that even though smoking is legal for individuals older than 18, nonsmokers have a right to breathe clean air. The

study found that 97 percent believe smoking should not be allowed in elementary and high school buildings, 89 percent believe smoking should not be allowed in public facilities, 85 percent believe smoking should not be allowed in entertainment arenas, 61 percent believe smoking should not be allowed in private businesses and other non-government work sites and 68 percent believe smoking should not be allowed in restaurants. While only 32 percent believe smoking should not be allowed in bars and cocktail lounges, that percentage is up from 22 percent in 2002. A fact sheet on the study findings is attached.

Some may wonder why the Occupational Safety and Health Administration has not promulgated rules on secondhand smoke. Because of repeated Congressional admonitions that secondhand smoke is an issue best handled by states, federal regulatory agencies have been discouraged from undertaking rulemaking or research efforts to protect private-sector workers and the public. In 2001, OSHA withdrew its Indoor Air Quality Proposal and terminated the rulemaking proceeding. Since that proposal was first issued, a great many state and local governments and private employers have taken action to curtail smoking in public areas and in workplaces.

As of July 2004, 12 states have adopted state smoke-free workplace laws. Eleven states include restaurants in their smoke-free workplace laws, and seven states include bars. Ten additional states have implemented various combinations of 100 percent smoke-free provisions since 2002. A listing of the states with comprehensive smoke-free workplace laws is attached.

California has the longest history of smoke-free workplace laws. Smoking prevalence has declined and California smokers are smoking fewer cigarettes. Accelerated reductions have been documented for heart disease deaths and lung cancer incidence rates. From 1988 through 1999, lung and bronchus cancer rates in California declined at nearly six times the rates of decline in the nation. In addition, six out of nine cancer types that have been linked to tobacco use had a lower incidence rate in California than the rest of the United States in 1999.

<u>Economic Impact of Smoke-Free Workplace Laws</u>

Numerous studies have documented the economic impact of smoke-free policies. Key findings from *A Summary of Studies Assessing the Economic Impact of Smoke-free Policies in the Hospitality Industry* by Scollo and Lal (VicHealth Centre for Tobacco Control, 2004) are quoted below.

- No negative economic impact from the introduction of smoke-free policies in restaurants and bars is indicated by the 21 studies where findings are based on an objective measure such as taxable sales receipts, where data points several years before and after the introduction of some-free policies were examined, where changes in economic conditions are appropriately controlled for, and where appropriate statistical tests are used to control for underlying trends and

fluctuations in data. Just a few studies have found negative effects and each of these is methodologically flawed.

- Studies concluding a negative economic impact have predominately based findings on outcomes predicted before introduction of policies, or on subjective impressions of estimates of changes rather than actual, objective, verified or audited data. These studies were funded primarily by the tobacco industry or organizations allied with the tobacco industry. Almost none of the studies finding a negative impact are published in peer-reviewed journals.

A study conducted in Minot, North Dakota, after implementation of the smoke-free restaurant ordinance showed no negative impact on business.

Litigation on Secondhand Smoke

At the request of an interim committee in 2004, the Department of Health researched litigation on secondhand smoke. The first secondhand smoke case was filed in 1976. Since the early 1980s, more than 420 cases involving exposure to secondhand smoke have been identified. This number does not include cases settled out of court or workers compensation claims.

Attached is a recent paper on "Lawsuits and Secondhand Smoke" published by E. L. Sweda, Jr. in the March 2004 issues of *Tobacco Control*. This article describes litigation over the past quarter century where nonsmoking litigants have prevailed. Damages awarded in these suits ranged from hundreds of dollars to hundreds of thousands of dollars. The article states: "During the past two decades, nonsmokers who have been harmed by exposure to on-the-job SHS [secondhand smoke] have been awarded worker's compensation benefits and disability benefits." Two precedent-setting cases are referenced on page i62 of the attached article.

Potential Pilot Project

The Department of Health has held preliminary discussions with North Dakota Workforce Safety and Insurance regarding the development of a pilot project to assess the impact of an insurance discount for smoke-free workplaces on workers compensation claims and costs. A proposal or a plan has not yet been developed. The Department of Health would be very interested in pursuing such a project.

Conclusion

In conclusion, the effects of secondhand smoke are significant and well documented, as are the benefits of smoke-free workplaces. There is growing support for smoke-free environments in North Dakota. Finally, smoke-free laws have been shown to have no negative impact on businesses. Senate Bill 2307 would promote the adoption of smoke-free policies in the workplace by providing an incentive for businesses.

The *Surgeon General's Report on Reducing Tobacco Use* strongly recommends smoking bans and restrictions as an effective means to reduce nonsmokers' exposure to secondhand smoke.

This concludes my testimony on Senate Bill 2307. I am happy to answer any questions you may have.